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In re Application of  
MASURE, et al.  
U.S. Application No.: 10/019,337 : DECISION ON PETITION  
PCT No.: PCT/EP00/04918 :  
Int. Filing Date: 26 March 2000 : UNDER 37 CFR 1.137(b)  
Priority Date: 29 June 1999 :  
Attorney Docket No.: JAB-1512 :  
For: NEUROTROPHIC FACTOR RECEPTOR :

This decision is in response to applicant's "Petition For Revival of patent Application Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 29 March 2002. Applicant included authorization to charge the \$1300.00 petition fee to Deposit Account No.: 10-0750.

#### BACKGROUND

On 26 March 2000, applicant filed international application PCT/EP00/04918, which claimed priority of an earlier application filed 29 June 1999. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 29 December 2001.

On 19 December 2001, applicant filed the present petition accompanied by a check in the amount of \$1280.00; a transmittal letter for entering the U.S. national stage under 35 U.S.C. 371; payment of the U.S. basic national fee; a First preliminary amendment; a copy of the published international application; an executed oath or declaration of the inventors; an assignment document for recording; a sequence disk and a sequence listing.

On 06 March 2002, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide a nucleotide and/or amino acid sequence disclosure in compliance with 37 CFR 1.821-1.825. Applicant was afforded two months to file the response.

On 17 April 2002, applicant responded with an amendment to the specification; applicant did not include a computer readable diskette version of the sequence listing.

On 28 June 2002, applicant was mailed a "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) informing applicant that the sequence listing filed 17 April 2002 did not comply 37 CFR 1.821-1.825 and thus was not a proper response to the Form

PCT/DO/EO/905 mailed 06 March 2002. Applicant was afforded one month from the mailing of the Form PCT/DO/EO/916 or within the time remaining in the response set forth in the Form PCT/DO/EO/905, whichever was longer.

On 30 December 2002, applicant filed a petition for an extension of time and response to the notice of a defective response.

On 15 January 2003, applicant was mailed a communication and notice of abandonment informing applicant that the above-identified application was abandoned on 06 October 2002 for failure to respond to the Form PCT/DO/EO/916 within the time period prescribed therein and advised to file a petition for revival.

On 21 January 2003, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909).

On 06 February 2003, applicant filed the present petition to revive pursuant to 37 CFR 1.137(b).

### **DISCUSSION**

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional" and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

With regard to Item (2), applicant included authorization to charge the \$1300.00 petition fee to Deposit Account No.: 10-0750.

As to Item (3), applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies Item (3).

With regard to Item (4), the terminal disclaimer is not required since this application was filed after 08 June 1995.

Thus, applicant has satisfied Items (2) - (4) above.

However, with regard to Item (1), the proper response was the required sequence listing pursuant to 37 CFR 1.821-1.825. The computer readable form accompanying the present petition was not readable. (See attached copy of CRF Problem Report.) Accordingly, the proper reply has not been furnished.

For the reasons stated above, the petition for revival cannot be granted at this time and the application remains abandoned.

**CONCLUSION**

For the reasons stated above, applicant's petition under 37 CFR 1.137(b) is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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